

Unto the Right Honourable,  
The Lords of Council and Session,  
THE  
PETITION  
OF  
The University of St. ANDREWS,

*Humbly sheweth,*

**T**hat where Your Lordships, by Your Interloquitor the 18th. Instant, Found, That our Institution could not prejudice the Right formerly granted to the Town of *St. Andrews*, and found it proven, that *St. Andrews* was a Burgh by Our Charter: As also, that the Act ratifying Our Priviledges, falls under the Act *Salvo*; And that the Clause in our Foundation comprehends only Punishment of Injuries done against our Members, but not done by them: And that our Jurisdiction without our Precincts is but Cumulative.

As to which we did present a long Petition; and this matter having no connection or resemblance with any part of our Laws, We did Found upon the common Custom, in relation to Universities in all the rest of the Neighbouring Nations, and endeavoured to establish, what we advanced by the Authority of known and famous Lawyers, presuming that it could not but be allowed to the University, to use those kind of Weapons in defence of their Privilege without any censure, but your Lordships have been pleased to refuse it.

We do humbly conceive that the length of our former Petition, and perhaps the indistinctness of it, with the great multitude of Business which lyes upon your Lordships, has hindered the Cause of the University, as it was then represented, to be clearly understood, and therefore we beg leave once more shortly and plainly, humbly to beseech your Lordships to consider what we represent, for rectifying of the said Interloquitor.

We do understand, that the Magistrates of *St. Andrews* endeavour to create a prejudice against our Jurisdiction, as being more than necessary for Schoolmasters, and a probable occasion of disorder in the Town, But is not this to Reason below the Dignity of Lawyers or Gentlemen, to compare an University to Schoolmasters? Our Countrey has shown but too few Marks of Respect to Learning, they can suffer no diminution, without a palpable Discouragement; The Town of *St. Andrews* has not adventured to say that ever the Rector or Masters refused them Justice.

All these pretended inconveniencies has not induced one single Nation in Christendom to strip an University of a Competent Jurisdiction: But besides, the Jurisdiction of this University extends only to lighter Crimes, and can be the occasion of no disorder, for the Masters cannot protect against the punishment of atrocious Injuries; And what absurdity were it, that Young Gentlemen should be trailed before Baillie Courts for small Injuries? If our Priviledges were obscure in this Point, it were to be helped by a favourable Interpretation; for there is no Reason why we should stand alone; and it should be grudged to us that which *Glasgow* and *Aberdeen* are in Possession of, and which no Lawyer in any other place of the World ever dreamed to call in question.

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But this way of Reasoning, from Inconveniencies and merite, used by the Town, being trifling of it self, and absolutely unfit to be a Rule in Judging, we shall trouble your Lordships no further as to that Point.

Our Grounds to be considered are shortly, 1. The University being Erected near 300 Years ago, by the concurring Authority of the King, the Pope, and the Bishop, and Established without contradiction, The Constitution cannot now, after so long a time, be quarrelled, upon any pretence of want of Power in the Granter, or prejudice of private Right; But the Town of *St. Andrews* having received the University in its Bosom, without protesting against any of its Priviledges, must allow them to be extended, with all the Favour competent to Universities by the common Law. 2. Notwithstanding of all the Erections of Royal burghs in the Kingdom, yet the King, by Verrue of the *Regalia*, or *Jura Majestatis*, might Erect an University within any Burgh of the Nation, with a Jurisdiction privative as to its own Members; becaute the Right of Erecting Universities is *inter Regalia*, and owned so by all the Lawyers who treat upon that subject; Who do positively assert, that a Prince cannot be divested of that Power which is lodged in him, for the publick Utility, by the Grants or Priviledges to any City, unless in the Erection of the City, there were a special Provision to the contrary. And this being established upon the unanimous Authority of Lawyers, we hope Your Lordships will afford it some regard. 3. There appears no distinct former Priviledge of the Burgh of *St. Andrews*, which can be prejudged; and the general Presumption arising from their being a Burgh is abundantly excluded, by the known Power and Priviledge that the Bishop had, which was so great and clearly owned, that the Towns Charter granted by King *James the 6th*. the only good Document ( we know ) they have to show, that they are a Burgh, is granted with the Bishops express consent.

Since then there appears no special priviledge competent to the Town of *St. Andrews*, at the time of the Erection of the University, which could receive prejudice by the Priviledges of the University; It is to be presum'd in a matter of that Antiquity and Solemnity, the Town had no such Priviledge. 4<sup>th</sup>. Whatever defect has been in the Original Constitution, it is supply'd by the presum'd Consent of the Town of *St. Andrews*; which is inferred, not only from the long Taciturnity, and the Interest that the Town had not only to receive the University with these Priviledges, but even to have beged it upon much harder Terms; But this Consent is inferred from the Knowledge and not contradiction of the Magistrates; And this Knowledge is proven by the Charters of King *Ja.* the 1<sup>st</sup>. wherein the Provost of *St. Andrews* is Witness, and in these days the Witnesses were not considered as meer Witnesses to the Subscription but to the deed, and consequently must know it: And when we were willing to have touched this point at the last Debate, it was unhappily waved.

Thus we hope, we have cleared, that the former imaginary Rights of *St. Andrews* cannot hinder the effect of our Constitution; But this is yet more formally Established by the Act of Parliament in *Anno 1621*. which we do conceive Your Lordships will yet, find to have the effect of a Law in our favours, which is the next point to be cleared.

This Act cannot be considered as a private Ratification stolen through without the Knowledge of the Town of *St. Andrews*, Because in that very Act, there is an evident Homologation for the Town gets the benefite of a Weekly Mercat, which they have enjoyed to this day, And we beg Your Lordships Interloquitor upon this point, if the Town, who have enjoyed the benefite of the Act can be said to be ignorant of it, or allowed to quarrel it, which truly passes our comprehension.

The next point to be cleared is, That our Constitution gives us Power over our own Members in cases of small injuries, which we contend it does; First from the general custom of all Nations in the matter of Universities, and from the natural effect of Jurisdiction bestowed upon any Society; Which in the first place regards its own Members, and were enough to explain any obscurity, if there were any in that Articles of our Privileges. 2<sup>dly</sup>, From the necessity of such a Jurisdiction, from the end of our Constitution, which being to Govern and Form the Spirits of Young Noblemen and Gentlemen in manners, as well as Letters, does essentially require it. 3<sup>ly</sup>, From the Records of the University, only a few Years later then our Constitution, which in



*re tam antiqua* is no small evidence for clearing the obscurity of a Clause. 4thly. The Act of Parliament, having excepted the Jurisdiction of the Council, Session, and Justiciary from the extent of our Priviledges upon our own Members, does powerfully suppose we had it, and establishes that Jurisdiction, against the Town of St. Andrews and all others.

And it is earnestly yet entreated, That Your Lordships would ordain the Magistrates to produce any Document of their own, to instruct they had a Jurisdiction before the University; And it is positively affirmed they cannot; It being very well known, and it is offered to be proven, that the Bishop of St. Andrews Dispon'd the Jurisdiction of his Regality in several parcels, a Hundred Years and more after our Erection, and the Earl of Crauford has one of them, with a privative Jurisdiction over the Town of St. Andrews, to punish all great Crimes and Blood-weits committed by the Inhabitants, and till of late the Town had no power, even over petty Ryots; If they had, let them show their Right.

The last point to be cleared is, That whatever Jurisdiction we have it must be Privative which we clear first from the foresaid Act of Parliament 2. Because it is reasonable to suppose, that the Jurisdiction of the University is older then the Town. seing before K James the 6th. time there is nothing to instruct *quæ qualis quantave fuit*: 3ly. By the common principles of Law, wherever a Society is Erected, endued with Jurisdiction, and to be Govern'd by the Rules of its own Constitution; or where a Jurisdiction is granted for certain Persons and Causes: That Jurisdiction, by the common consent of Lawyers, is understood to be privative, and by the custom of other Nations is determined so, in the cases of Universities.

Lastly, Albeit we have been all this time unwilling to be at the Trouble and Expences of probation, yet rather then we loss any thing of our Right, we offer to prove possession of our Jurisdiction acclaimed, which Your Lordships seem'd to think sufficient at the last Debate.

*May it therefore please Your Lordships to Re-consider the foresaid Interloquitor, and give us distinct Interloquitors upon the points above mentioned; and for the Dignity and Honour of the first University in the Nation, and one of the ancientest, the most Noble and best founded Society for Learning, if there occur any doubt, to allow us an fair Hearing upon points so much established by the Authority of Lawyers and customs of Nations.*

According to Justice, And Your Lordships Answer, &c.